

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Telephone Number Portability

Petition of TeleGuam Holdings, LLC to Extend
the Date for Implementation of Wireless-to-
Wireless LNP on Guam

Petition of Guam Wireless Telephone Co., LLC
for Limited Waiver or Extension of Time

Petition of IT&E Overseas, Inc. to Extend the Date
for Implementation of Wireless-to-Wireless LNP
on Guam

Petition of Choice Phone LLC for Waiver of LNP
Rules

Petition of Guam Wireless Telephone Co., LLC
for Declaratory Ruling, or Alternatively, Petition
for Limited Waiver and Extension of Time

CC Docket No. 95-116

ORDER

Adopted: October 14, 2005

Released: October 14, 2005

By the Deputy Chief, Spectrum and Competition Policy Division:

I. INTRODUCTION

1. In this order, we grant the petitions filed by TeleGuam Holdings, LLC (TeleGuam), Guam Wireless Telephone Co. (Guam Wireless), IT&E Overseas, Inc. (IT&E), and Choice Phone LLC (Choice Phone) (petitioners),¹ seeking additional time to comply with the Commission's wireless local number portability (LNP) requirements. We grant petitioners' requests for a waiver and extension of time based on our finding that petitioners have demonstrated that special circumstances exist to warrant an extension of time to comply with the porting requirements. We also find that it is in the public interest to grant petitioners' waiver requests. We find that granting petitioners additional time to comply with the

¹ See Telephone Number Portability, CC Docket No. 95-116, Petition of TeleGuam Holdings, LLC to Extend the Date for Implementation of Wireless-to-Wireless Local Number Portability on Guam, filed July 27, 2005 (TeleGuam Petition); Petition of Guam Wireless Telephone Company, LLC for Limited Waiver of Rule 52.31, or Extension of Time, to Comply with the Commission's Wireless Local Number Portability Requirements, filed August 16, 2005 (Guam Wireless Petition); Petition of IT&E Overseas, Inc. to Extend the Date for Implementation of Wireless-to-Wireless Local Number Portability on Guam, filed August 16, 2005 (IT&E Petition); and Petition of Choice Phone LLC for Waiver of the LNP Rules and Extension of the Implementation Date for Wireless Local Number Portability, filed August 16, 2005 (Choice Petition).

porting requirements will ensure that porting is implemented on Guam as quickly as possible in a smooth and efficient manner for the benefit of consumers.

II. BACKGROUND

2. Under the Commission's LNP rules, commercial mobile radio service (CMRS) carriers were required to offer number portability upon request from a competing carrier in the largest 100 metropolitan statistical areas (MSAs) by November 24, 2003.² Outside the largest 100 MSAs, CMRS carriers were required to support number portability by May 24, 2004, or within six months after receiving a request for number portability, whichever is later.³

3. *TeleGuam Petition*. On July 27, 2005, TeleGuam, the parent company of wholly owned subsidiaries, GTA Wireless and GTA Telecom, filed a petition seeking a waiver of the Commission's wireless local number portability requirements. TeleGuam states that on March 15, 2005 GTA Wireless, its wireless subsidiary, sent a bona fide request (BFR) for wireless-to-wireless number portability to all CMRS carriers on Guam. The request specified a six-month implementation deadline of September 15, 2005. TeleGuam explains that, although the GTA Wireless request was for wireless-to-wireless LNP, upgrades to the network of TeleGuam's wireline subsidiary, GTA Telecom, the incumbent LEC on Guam, are necessary to support wireless porting for all carriers on Guam. Hence, TeleGuam asserts that the BFR effectively imposed obligations on GTA Telecom as well.⁴

4. TeleGuam claims that, although GTA Telecom planned to make the necessary upgrades to its network to support porting in time to meet the implementation deadline associated with the GTA Wireless BFR, vendor installation delays require GTA Telecom to seek more time to make the necessary changes to its equipment. Specifically, TeleGuam explains that, to deliver the SS7 capabilities needed for LNP, GTA Telecom purchased a Nortel broadband STP (signal transfer point), a next generation signaling engine.⁵ Although delivery and installation of the Nortel equipment was scheduled to be completed by May 2005, installation was delayed because of networking, equipment, and software problems. TeleGuam indicates that GTA Telecom took a number of steps to resolve these issues and minimize delay. For example, GTA Telecom had its network redesigned to facilitate connectivity to the Nortel signaling engine, worked with Nortel to expedite the manufacture and shipment of cables to Guam, and changed its network connectivity design to expedite connectivity to Verisign in Los Angeles.⁶ TeleGuam asserts that, despite these efforts, GTA Telecom will be unable to support porting by the September 15th deadline of the GTA Wireless BFR. Therefore, TeleGuam requests that the Commission extend the porting implementation deadline for all carriers until December 15, 2005.

5. In addition to the March BFR from GTA Wireless, TeleGuam also indicates that an independent CMRS carrier on Guam, GuamCell, sent a separate request for wireless-to-wireless porting to all CMRS carriers on Guam, including GTA Wireless, on April 4, 2005.⁷ The GuamCell BFR

² 47 C.F.R. § 52.31; Verizon Wireless Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation, WT Docket No. 01-184 and CC Docket No. 95-116, *Memorandum Opinion and Order*, 17 FCC Rcd 14972 (2002) (2002 Forbearance Order).

³ Telephone Number Portability, CC Docket No. 95-116, *First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 7236, 7314 (1997) (*First Memorandum Opinion and Order*); 2002 Forbearance Order, 17 FCC Rcd at 14986.

⁴ See Letter from Richard J. Metzger, Vice President-Regulatory Affairs for TeleGuam, to Marlene H. Dortch, Secretary, FCC (filed Aug. 5, 2005) (TeleGuam Letter).

⁵ TeleGuam Petition at 2.

⁶ *Id.* at 4.

⁷ TeleGuam Letter at 1.

requested implementation by October 15, 2005.⁸ On behalf of both GTA Telecom and GTA Wireless, TeleGuam asks to extend the implementation deadline of the April GuamCell BFR until December 15, 2005, as well.⁹

6. *Guam Wireless, IT&E, and Choice Phone Waiver Petitions.* Guam Wireless, IT&E, and Choice Phone are competing CMRS carriers on Guam. On August 16, 2005, each filed a waiver request seeking an extension of time until February 15, 2006, to comply with the Commission's wireless LNP requirements.

7. These carriers explain that all CMRS carriers on Guam connect to each other indirectly and rely on Guam's incumbent LEC, GTA Telecom, for switching and interconnection, and that because GTA Telecom has not completed the necessary upgrades to its network and is not ready to support porting, they are unable to begin porting as well. In addition, Guam Wireless explains that, although it has purchased the necessary LNP-capable switch, it has neither purchased the necessary software nor signed an agreement for LNP support, and it is precluded from taking either of these steps until GTA Telecom upgrades its signaling equipment and is prepared to cooperate in the implementation and testing process necessary to provide LNP.¹⁰ IT&E indicates that GTA Telecom's failure to complete equipment upgrades prevents it from testing its LNP switch.¹¹ Choice Phone explains that it uses a type of iDen switch that has never been used before for LNP. To support porting, it will need to modify software for the switch and test the new software in a ninety-day field test to validate and debug LNP features. Testing may not begin, Choice Phone asserts, until GTA Telecom is capable of supporting porting within its network.¹²

8. The record reflects some discrepancies regarding when and from whom these carriers may have received bona fide requests for wireless-to-wireless porting. Although TeleGuam states that GTA Wireless issued bona fide requests for wireless-to-wireless porting to all competing carriers on March 15th, Choice Phone and Guam Wireless view the facts differently. Choice Phone indicates its belief that it has only received a BFR for intermodal porting from GTA Telecom, not a wireless-to-wireless request from GTA Wireless, and indicates that the request for intermodal porting was stayed as a result of a decision by the U.S. Court of Appeals for the D.C. Circuit on March 11, 2005.¹³ Choice Phone also notes that the GTA Telecom request was dated March 4th, not March 15th.¹⁴ Guam Wireless,

⁸ A BFR has a date of request and a date that the receipt confirmation is due. The effective date is six months after the date the receipt confirmation is due. GuamCell's BFR showed a date of request of April 4, 2005, a receipt confirmation date of April 15, 2005, and an effective date of October 15, 2005. See Attachment to Choice Phone Petition.

⁹ TeleGuam Letter at 1-2.

¹⁰ Guam Wireless Petition at 4.

¹¹ IT&E Petition at 2.

¹² Choice Phone Petition at 2-3.

¹³ *Id.* at 2. In *U.S. Telecom Ass'n v. FCC*, 400 F. 3d 29 (D.C. Cir. 2005), the U.S. Court of Appeals for the D.C. Circuit reviewed the FCC's order regarding intermodal number portability. The Court determined that the Commission had failed to prepare a Final Regulatory Flexibility Analysis regarding the impact of the Intermodal Order on small entities, which the Court found to have been required by the Regulatory Flexibility Act (RFA), 5 U.S.C. § 604. Accordingly, the Court directed the Commission to prepare the required Final Regulatory Flexibility Analysis, and stayed future enforcement of the Intermodal Order "only as applied to carriers that qualify as small entities under the RFA" until the agency prepares and publishes that analysis. See Federal Communications Commission Seeks Comment on Initial Regulatory Flexibility Analysis in Telephone Number Portability Proceeding, *Public Notice*, CC Docket No. 95-116, 20 FCC Rcd 8616 (2005).

¹⁴ Choice Phone Petition at 2. Apparently, this discrepancy can be explained by the fact that the BFR's date of request was March 4, 2005 and the date the receipt confirmation was due was March 15, 2005. See note 8, *supra*

in turn, claims that it received its first BFR for porting from an entity named “GTA” on February 22, 2005, and then received another BFR from this entity on March 4, 2005.¹⁵ Regarding the February request, Guam Wireless argues that the Commission should issue a declaratory ruling invalidating the request because it failed to specify an effective date.¹⁶ In addition, Guam Wireless argues, the Commission should also issue a declaratory ruling invalidating the March BFR because the request was ambiguous. Specifically, it contends that, because the request was from the entity simply designated “GTA,” it was not clear whether the request was from GTA Telecom and sought intermodal porting or whether it was from GTA Wireless and was a request for wireless-to-wireless porting.¹⁷ TeleGuam disputes the Choice Phone and Guam Wireless version of events, arguing that it was obvious that its March BFR sought wireless-to-wireless porting on behalf of GTA Wireless.¹⁸ Despite the uncertainty regarding the GTA requests, all carriers acknowledge receiving the April 4th GuamCell BFR.¹⁹

III. DISCUSSION

9. The Commission may, on its own motion or on petition, waive its rules when good cause is demonstrated.²⁰ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.²¹ In doing so, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.²² Commission rules are presumed valid, however, and an applicant for waiver bears a heavy burden.²³ Waiver of the Commission’s rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.²⁴ In seeking an extension of the LNP deployment deadline, a carrier must provide substantial, credible evidence to support its contention that it is unable to comply with the deployment schedule.²⁵ In addition, section 52.31(d) requires that petitions seeking additional time to implement porting must be filed at least sixty days in advance of the LNP deployment deadline.²⁶

10. In its July 27, 2005 petition, as supplemented by its August 5th letter, TeleGuam seeks

and Telephone Number Portability, CC Docket No. 95-116, Petition of Guam Wireless Telephone Company, LLC for Declaratory Ruling, or Alternatively, Petition for Limited Waiver or Extension of Time, filed Aug. 19, 2005 (Guam Wireless Declaratory Ruling Petition) at Attachment B.

¹⁵ See Guam Wireless Declaratory Ruling Petition at 2.

¹⁶ *Id.* at 4-5.

¹⁷ *Id.* at 5. To the extent that the Commission determines that the February and/or March TeleGuam BFRs are valid on behalf of GTA Wireless, Guam Wireless reiterates its request for waiver and extension of time to implement porting. It also requests a waiver of the sixty-day filing deadline set forth in section 52.31(d) of the Commission’s rules.

¹⁸ See Telephone Number Portability, CC Docket No. 95-116, Reply of TeleGuam Holdings, LLC to the Petitions of IT&E and Guam Wireless and to the Comments of Choice Phone, Concerning the Implementation of Wireless-to-Wireless LNP on Guam, filed Sept. 15, 2005 (September 15th Reply Comments).

¹⁹ See TeleGuam Letter at 1; Guam Wireless Petition at 1; IT&E Petition at 1; and Choice Phone Petition at 1.

²⁰ 47 C.F.R. § 1.3; see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (*WAIT Radio*).

²¹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (*Northeast Cellular*).

²² *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

²³ *WAIT Radio*, 418 F.2d at 1157.

²⁴ *Id.* at 1159.

²⁵ 47 C.F.R. § 52.23(e); see also 47 C.F.R. § 52.31(d).

²⁶ 47 C.F.R. § 52.31(d).

extensions of time for both GTA Telecom and GTA Wireless to meet deadlines imposed by GTA Wireless' March 15, 2005 BFR and GuamCell's April 4, 2005 BFR. We note that to the extent that the GTA Wireless BFR were to trigger such obligations, TeleGuam's petition would be untimely under section 52.31(d). TeleGuam requests a waiver of the sixty-day advance filing rule, claiming that its delay in filing its waiver request was caused by continued uncertainty as to whether the September 15th deadline associated with the GTA Wireless BFR could be met.²⁷ GTA Wireless' BFR, however, does not trigger any obligations for either GTA Wireless or GTA Telecom. It does not trigger obligations for GTA Wireless because under the Commission's LNP rules, a carrier becomes obligated to implement porting when it receives a request for porting from another carrier, not when it sends a request. GTA Wireless' BFR does not trigger obligations for GTA Telecom because GTA Telecom is not subject to the Commission's wireless LNP requirements.²⁸ Thus, we dismiss TeleGuam's petition to the extent that it seeks an extension of time to meet deadlines that it mistakenly believed the GTA Wireless March 15, 2005 BFR imposed on GTA Wireless and GTA Telecom. We also dismiss TeleGuam's request for waiver of the sixty-day advance filing rule as moot. Below, however, we do consider TeleGuam's extension of time request for GTA Wireless to meet deadlines imposed by GuamCell's April 4, 2005 BFR.

11. In their respective August 16, 2005 requests for waiver, both Choice Phone and Guam Wireless acknowledge that their LNP obligations were triggered as a result of the April 4th GuamCell BFR. As detailed below, we find that there is substantial and credible evidence to support their contention that they are unable to comply with the deployment schedule triggered by the April 4 BFR. Accordingly, we find it unnecessary to resolve whether they had received a valid BFR for wireless-to-wireless porting from GTA Wireless before April 4, which would have triggered an even earlier deployment schedule. Accordingly, we dismiss the Guam Wireless Declaratory Ruling Petition as moot. In addition, because we rely on the April 4th GuamCell BFR as the request triggering LNP obligations, we find that it is unnecessary to address Guam Wireless' request that we waive the sixty-day advance filing deadline in section 52.31(d) of the Commission's rules.²⁹

12. We find that petitioners have presented evidence of special circumstances sufficient to warrant an extension of time to implement porting. First, with respect to GTA Wireless, we find that TeleGuam has presented evidence showing that its wireline subsidiary, GTA Telecom, was diligent in its efforts to prepare for porting. Specifically, evidence shows that GTA Telecom began work to purchase and install its new signaling equipment in January, 2005, several months in advance of receiving its first BFR for number portability.³⁰ In addition, the evidence shows that, when connectivity problems with the new signaling engine were first discovered, GTA Telecom had its network redesigned to use an existing local area network, worked to have new cables manufactured and shipped to Guam, and changed its network connectivity design to facilitate the installation of its new equipment.³¹ Despite these efforts, evidence shows that the necessary technical upgrades will not be completed in time to meet the current implementation deadline. In view of evidence that TeleGuam has made diligent and reasonable efforts to prepare for porting, we find that TeleGuam has justified GTA Wireless' need for an additional period of time to comply with the porting requirements.

²⁷ TeleGuam Letter at 1.

²⁸ As a practical matter, it appears that GTA Telecom will need to upgrade its network in order for GTA Wireless to implement the GuamCell BFR, and because of their common affiliation, we will hold GTA Wireless and its parent, TeleGuam, responsible for any delay in doing so due to any inaction of the part of GTA Telecom.

²⁹ Although GuamCell's BFR was dated April 4, 2005, it specified an implementation deadline of October 15, 2005. Accordingly, we find that the Guam Wireless petition for waiver was timely filed under section 52.31(d).

³⁰ TeleGuam Petition at 3.

³¹ *Id.* at 4.

13. Petitioners Guam Wireless, IT&E, and Choice Phone have also presented evidence of special circumstances sufficient to warrant an extension of time to comply with the porting requirements. Specifically, these carriers have explained, and TeleGuam agrees, that all CMRS carriers on Guam connect to each other indirectly and rely on GTA Telecom for switching and interconnection. Because of this interdependence, these petitioners are unable to implement porting until GTA Telecom upgrades its network and they have an opportunity to coordinate and test their equipment with GTA Telecom's upgraded system. Given that these petitioners must rely on the readiness of the incumbent LEC and cannot control the LEC's efforts to complete necessary upgrades, we find that it is reasonable to afford them additional time to implement porting.

14. We also find that petitioners have demonstrated that granting their requests for additional time to implement porting would serve the public interest. Granting petitioners' requests for waiver and establishing a coordinated LNP implementation schedule will help ensure a smooth rollout of porting on Guam. TeleGuam has shown that additional time is necessary for GTA Telecom to complete installation and fully test equipment upgrades necessary to support porting for both GTA Wireless and unaffiliated carriers. This, in turn, will aid the other petitioners' efforts to install and test their own equipment upgrades and prepare for porting. By ensuring that all carriers have sufficient time to complete and test necessary upgrades, we help ensure that porting is implemented on Guam as quickly and efficiently as possible. Denying petitioners' requests for additional time to implement porting, by contrast, would likely result in dropped and misrouted calls because of unresolved technical issues in carrier networks.

15. Accordingly, we grant TeleGuam's request for a waiver and extension of time on behalf of GTA Wireless until December 15, 2005.³² In addition, we grant Guam Wireless', IT&E's, and Choice Phone's requests for a waiver and extension of time until February 15, 2006, to comply with the wireless LNP requirements for all porting requests they may receive prior to that date.

IV. ORDERING CLAUSES

16. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 155(c), sections 1.3 and 52.31(d) of the Commission rules, 47 C.F.R. § 1.3 and 52.31(d), and the authority delegated pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331, the petition for waiver and extension of time to implement wireless-to-wireless porting filed by TeleGuam is GRANTED in part and DISMISSED in part.

17. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 155(c), sections 1.3 and 52.31(d) of the Commission rules, 47 C.F.R. § 1.3 and 52.31(d), and the authority delegated pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331, the petitions for waiver and extension of time filed by Guam Wireless, IT&E, and Choice Phone are GRANTED as described herein.

³² In its September 15th Reply Comments, TeleGuam requests that, if the Commission grants the requests of Guam Wireless, IT&E, and Choice Phone to extend the deadline for implementation of LNP to February 15, 2006, it provide the same extension of time to TeleGuam, despite TeleGuam's original request seeking an extension of the LNP implementation deadline only until December 15, 2005. We reject this request. We find that, in its September 15th Reply Comments, TeleGuam presents no evidence showing that an additional two-month extension of time to implement porting is necessary. Moreover, TeleGuam reiterates that GTA Wireless will be ready to implement porting by December 15, 2005. Guam Wireless, IT&E, and Choice Phone have demonstrated that they need additional time after GTA Telecom completes its network upgrades to coordinate and test their equipment with GTA Telecom's new system.

18. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 155(c), sections 1.3 and 52.31(d) of the Commission rules, 47 C.F.R. § 1.3 and 52.31(d), and the authority delegated pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331, the August 19, 2005, Petition for Declaratory Ruling filed by Guam Wireless is DISMISSED as moot.

FEDERAL COMMUNICATIONS COMMISSION

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